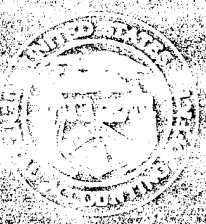
FOREIGN FARM WORKERS IN U.S.

Department of Labor Action Needed to Protect Florida Sugar Cane Workers



GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-247239

June 30, 1992

The Honorable William Ford
Chairman, Committee on Education and Labor
House of Representatives

The Honorable Austin J. Murphy
Chairman, Subcommittee on Labor Standards
Committee on Education and Labor
House of Representatives

The Honorable George Miller
House of Representatives

Every October, up to 10,000 workers from Caribbean countries are brought to the United States for about 5 months to harvest Florida sugar cane and then return home. The Department of Labor is responsible for enforcement of laws and regulations governing the employment conditions of these Caribbean workers. Farm worker advocates and congressional committees have been concerned about certain aspects of these workers' employment, such as whether sugar cane growers meet the requirement to pay workers' transportation costs to and from the United States, and whether the workers receive all the earnings due them. Notably, they have questioned the management of two wage deductions—a 2-percent deduction from the Caribbean workers' wages for a health and life insurance plan and a 23-percent deduction for a savings plan. You asked us to review Labor's enforcement of the Caribbean workers' contracts with the growers and the laws and regulations relating to (1) the payment of workers' transportation costs, (2) the health and life insurance plan, and (3) the savings plan.

Background

U.S. agriculture uses foreign workers to harvest crops. Under the authority of the Immigration Reform and Control Act of 1986, Labor regulates the use of these workers through the H-2A program, which is a modification of the H-2 program operated by Labor since the early 1950s.

To harvest sugar cane in Florida, Caribbean workers enter into employment contracts with Florida growers.[1] Labor is responsible for enforcing H-2A program regulations and pertinent other regulations and laws, such as the Fair Labor Standards Act and the Employee Retirement Income Security Act of 1974 (ERISA). For example, Labor must ensure that wages paid to workers meet minimum wage requirements, that growers meet requirements for paying workers' round-trip travel expenses, and that any deductions taken by employers from workers' wages, such as the 23-percent savings deduction and 2-percent health and life insurance deduction, are reasonable (as required by H-2A regulations). If Labor finds that growers do not comply with the laws and regulations governing the use of foreign temporary workers, it can deny growers the right to participate in the program. Also, Labor can make monetary recoveries from growers for the workers to correct wage or other payment violations under the H-2A program. Further, since 1987, Labor can assess civil penalties for H-2A violations.

To participate in the program, the Caribbean sugar cane workers also enter into agreements with their home governments before coming to the United States. These agreements cover, for example, savings plan arrangements. The British West Indies Regional Labour Board, which includes the ministers of labor of the various West Indies countries, was established to oversee the operations for the home governments.[2] The Regional Labour Board has established an administrative agent, the West Indies Central Labour Organization (WICLO), headquartered in Washington, D.C., that acts as the liaison between the foreign sugar cane workers, the growers, and the workers' home governments. (See app. I for a history of the U.S. temporary foreign worker program, with a focus on Florida sugar cane workers.)

Scope and Methodology

We interviewed Labor officials, Florida sugar cane growers, migrant worker advocacy group representatives, an official of the U.S. Life Insurance Company, Caribbean government officials, and officials of WICLO. For the two sugar cane growers employing the most Caribbean

[1]Caribbean sugar cane workers are employed by six Florida growers. Up through the 1990-91 harvest season, the employment contract used by the growers was a three-party contract signed by the worker, an agent of the home government, and the grower. Since then, the employment contract has been a two-party contract signed by the worker and the grower. In addition to the two-party contract, these workers enter into agreements with their home governments to participate in the H-2A program.

[2]The Regional Labour Board includes a chairman, who is the Permanent Secretary of the Ministry of Labor in Jamaica, and members representing Barbados, Dominica, Grenada, Jamaica, St. Lucia, St. Vincent, and Trinidad and Tobago.

workers, we examined examples of payroll records showing wage deductions. We also examined Labor documents regarding its policies, laws, and regulations governing the use of temporary foreign workers. We submitted a series of questions to the Regional Labour Board about the H-2A program, but received only a partial reply. We conducted our work between September 1991 and April 1992 in accordance with generally accepted government auditing standards.

Results in Brief

The Department of Labor has been slow or done little to enforce certain laws and regulations pertaining to transportation costs, the health and life insurance plan, or the savings plan for Caribbean workers employed by Florida sugar cane growers. Labor has decided not to attempt to recover moneys for H-2A program violations involving the health and life insurance and savings plans that may have occurred before the 1991-92 harvest season. It will only seek monetary recovery starting with the 1991-92 season.

In violation of H-2A regulations, some workers from the lower Caribbean islands have had to pay part of the transportation costs from their home countries to Florida.[3] Labor is presently negotiating with the growers to settle a claim to recover $860,000 for transportation costs paid by the workers for the 1988-89 and 1989-90 harvest seasons. In June 1992, Labor told us that it had not decided whether to take any action to recover transportation costs borne by the workers in prior years.

ERISA was implemented in 1975 to protect workers' welfare and pension benefits. Since the 1950s, Labor has been responsible under the H-2 and H-2A programs for oversight of wage deductions for the workers' health and life insurance plan paid for by the workers. Even so, Labor did not initiate an inquiry into whether growers should be complying with ERISA until a farm worker advocacy group raised the question in 1989. In addition, Labor has provided little oversight of the expenditure of the insurance funds.

The workers' home governments instituted a mandatory workers' savings plan in the 1940s. Under the plan, the growers made the savings deductions, but Labor did not determine until 1991 that participation in the savings plan should be optional—not mandatory—for the Caribbean workers. Also, the workers have not received all of their savings

[3]Lower island workers are citizens from the islands of Barbados, Dominica, Grenada, Jamaica, St. Lucia, St. Vincent, and Trinidad and Tobago.

deductions or all of their interest payments. At most, workers receive 20.5 percent, not the full 23 percent that the growers deduct from the workers' gross wages, which is subsequently transmitted to the workers' savings accounts in their home countries. The Regional Labour Board deducts from the workers' savings accounts an amount equal to 2.5 percent of gross wages, which is used to support WICLO. In addition, although the workers' employment contract for many years had provided for the payment of interest on workers' savings, Labor has not yet determined whether that provision is enforceable.

Labor Found Transportation Cost Violations

Some workers have had to pay part of their transportation expenses, even though Labor's regulations require that employers pay all transportation expenses to and from the United States.[4] Although during the 1989-90 harvest season 16 percent of the workers came from the lower Caribbean islands (see table 1), Labor determined in 1990 that the growers limited their payment for transportation to no more than the round-trip airfare from Jamaica to Florida, regardless of actual cost. Compared with Jamaica, the airfare from the lower islands to Florida was higher; and the lower island workers were held responsible by the Regional Labour Board for paying the additional cost.

Labor initiated action against the growers to recover excess travel costs paid by the lower island workers for the 1988-89 and 1989-90 harvest seasons. Labor calculated that the growers owed about $860,000 to lower island workers for these two harvest seasons. As of June 1992, Labor was still negotiating a settlement of this claim with the growers. At that time, Labor had not decided whether to attempt to recover any excess transportation costs that may have been paid by lower island workers for harvest seasons prior to 1988-89.

Labor's policy is to limit the period for monetary recovery for an H-2A violation to 2 years (3 years in cases where repeat or willful violations are detected) preceding the date of the investigation. Labor told us that the

[4]Under the H-2A program (and predecessor H-2 program), employers of temporary foreign farm workers must pay (1) all transportation expenses to the United States for workers who complete at least 50 percent of the contract period and (2) all return trip expenses for workers who complete the full contract period.

2-year limitation is based on practical considerations, such as availability of evidence and resources.[5]

None of the growers employed any lower island workers for the 1990-91 harvest season. For the 1991-92 season, some growers hired lower island workers because the lower island governments assured them that their workers' transportation costs would be the same as for Jamaican workers. Some lower island workers, however, have alleged that their home governments charged them for part of their transportation costs for the 1991-92 season. As of June 1992, Labor had not completed its investigation of these allegations.

Table 1: H-2A Workers by Island of Residence

	H-2A workers		
Islands	**1989-90**	**1990-91**	**1991-92**
Barbados	263	0	60
Dominica	110	0	23
Grenada	25	0	11
St. Lucia	580	0	209
St. Vincent	620	0	290
Trinidad and Tobago	[a]	[a]	19
Jamaica	8,469	9,414	6,415
Total	**10,067**	**9,414**	**7,027**

[a]Trinidad and Tobago did not participate in the H-2A program in the 1989-90 and 1990-91 harvest seasons.

Lack of Labor Oversight of Health and Life Insurance Plan

The workers' health and life insurance plan has not been given the protections required of plan sponsors by ERISA, and there has been little oversight of how the insurance moneys have been spent.[6] ERISA was enacted in 1974 to protect workers' health and pension benefits. Although Labor has been responsible under both the H-2 and H-2A programs for oversight of wage deductions for the Caribbean workers' health and life insurance plan, Labor told us that it did not initiate an inquiry into ERISA's applicability to the insurance plan until questioned by the Florida Rural Legal Services in 1989. Labor concluded that growers were subject to the

[5]In addition, Labor stated that the 2-year limitation is consistent with policies established for other labor standards enforcement programs for which it has jurisdiction. As of June 1992, Labor could not tell us the statutory limitation period for monetary recoveries for H-2A violations. Labor's Office of the Solicitor is attempting to determine the statute of limitations that would be applicable.

[6]The health insurance coverage is for nonwork related medical needs. Work related medical needs are covered by the Workers' Compensation program.

requirements of Title I of ERISA and notified the growers that they had to meet these requirements if they continued making wage deductions for the workers' health and life insurance plan.[7] A Notice in the May 1991 Federal Register made the policy change known to the public. Labor currently is investigating certain growers' compliance with the requirements of Title I of ERISA. In late 1991, the growers and the Regional Labour Board made changes to the plan for the 1991-92 harvest season that require Labor to make a new determination of ERISA applicability.

Until the 1991-92 harvest season, WICLO had total control over substantial amounts of workers' wages that were deducted to pay for the health and life insurance plan, and Labor provided no oversight of WICLO's use of these funds. The workers' employment contracts required deductions of up to 3 percent of the workers' gross wages to fund the insurance plan[8] —about $800,000 for the 1990-91 harvest season. The growers sent this money directly to WICLO, which purchased a group health and life insurance policy from the U.S. Life Insurance Company for the workers; total premiums for the 1990-91 harvest season were $337,000. According to WICLO officials, WICLO retained the excess funds to pay for health care services not covered by the policy.[9]

WICLO acted as the claims administrator for the health benefits plan by receiving claims from workers, paying on behalf of U.S. Life for services covered by the insurance policy, and paying for additional services not covered by the policy. WICLO's role in the administration of insurance plan funds appears to have given WICLO fiduciary responsibilities subject to ERISA requirements, but, as of June 1992, Labor had not made a determination of WICLO's ERISA responsibilities.

Labor has not audited WICLO's financial operations of the health and life insurance plan.[10] In 1990, Labor's Office of Inspector General attempted to

[7]Title I provides for financial reporting, fiduciary responsibilities, and disclosure of worker rights and obligations.

[8]The contract also specified that WICLO could use these funds to pay for any extraordinary expenses incurred on behalf of the workers. As of the 1991-92 harvest season, the actual deduction was 2 percent of gross wages.

[9]According to WICLO officials, if all the funds are not needed to pay benefits in 1 year, the funds are used to provide benefits the following year. If funds are not adequate to meet workers' medical needs during the course of 1 year, WICLO said it provides supplemental funding. Under the U.S. Life policy, the workers must pay for the first doctor's visit for each episode of illness.

[10]The Regional Labour Board said that WICLO's operations are audited annually by a public accounting firm. However, neither WICLO nor the Regional Labour Board would provide us with copies of any audit reports.

investigate WICLO's operation of the insurance plan. However, WICLO denied the office access to its records.[11] The office made no further effort to investigate, concluding that WICLO is not subject to Labor's ERISA authority because WICLO is not an employee organization for the H-2A workers. However, in March 1992, the office told us that if Labor makes a final determination that WICLO is subject to ERISA, the Office of Inspector General will reevaluate whether to resume the investigation.

The U.S. Sugar Corporation and the other growers have taken actions during the past two harvest seasons resulting in changes in the administration of the health and life insurance plan. For the 1990-91 season, the U.S. Sugar Corporation deleted from the employment contract the mandatory insurance deduction, and for the first time its workers were asked to choose whether to participate in the plan. The other growers told us that they also made the insurance deductions voluntary beginning with the 1990-91 season, not by changing the employment contract document, but by providing their workers with a supplemental form to designate whether they would participate in the plan. In part to provide greater accountability for funds deducted for the insurance plan, the U.S. Sugar Corporation, in January 1992, demanded—and WICLO agreed—that WICLO enter a contract with U.S. Life permitting U.S. Sugar Corporation to remit the entire 2-percent deduction directly to U.S. Life rather than to WICLO. Under this new arrangement, U.S. Life has set up two accounts, one to pay policy premiums and one to pay for services not covered by the policy.[12] WICLO, however, continues to operate as claims administrator, receiving claims and writing checks on these accounts to pay for workers' claims.

Labor has not yet determined whether ERISA coverage extends to the new arrangements instituted for the 1991-92 harvest season. Labor anticipates it will issue an advisory opinion in June 1992 on whether the U.S. Sugar Corporation's involvement in the new arrangements results in an ERISA covered plan. Labor has already determined that, as the insurance plan existed in prior years, each grower maintained an ERISA covered plan; but as of June 1992, Labor had not decided whether it would take any action to correct past ERISA violations, if any are found. However, Labor told us that with respect to H-2A violations related to the health and life insurance

[11]WICLO alleged that as an arm of the British West Indies Regional Labour Board it enjoys "sovereign immunity." Sovereign immunity is a judicial doctrine that precludes bringing suit against a government without its consent. As of June 1992, Labor had not determined the appropriateness of WICLO's claim of sovereign immunity.

[12]Four of the other five growers also have adopted this new arrangement. The fifth grower made no deductions for insurance during the 1991-92 harvest season.

deductions, it would not seek to remedy violations prior to the 1991-92 harvest season.[13]

Payroll Savings Deduction Practices Questioned

All the workers were required to participate in a payroll savings plan until the 1990-91 harvest season. Beginning with the 1990-91 season, the U.S. Sugar Corporation modified the employment contract with its workers and made the savings deduction optional. Also, the other growers told us that they had offered their workers the option of participating voluntarily in the savings plan, using a supplemental authorization form. Later in the 1990-91 season, Labor informed the growers that the contractual provision for a mandatory savings deduction violated the requirement of the H-2A regulations that deductions be "reasonable."

Although the workers' employment contracts with the growers now make the savings deduction voluntary, farm worker advocates question whether the workers truly believe that the plan is voluntary. They point out that the home governments strongly urge the workers to sign an agreement before departing the Caribbean, indicating the workers' intent to sign up for the savings plan when they arrive at the growers' farms in Florida.[14] However, Labor has always held that it cannot consider the effect of these home government agreements in assessing whether the workers' decision to sign up for the plan is voluntary, because it only has jurisdiction over the relationship between the growers and the workers and does not have the authority to regulate the relationship between foreign governments and their own citizens and nationals. During the 1991-92 harvest season, over 97 percent of the workers signed up for the savings plan after arriving in Florida.

For those workers who choose to participate in the savings plan, the growers deduct 23 percent of their gross wages and transmit the deductions via various U.S. banks to the workers' home governments. The home governments place the deductions—which totaled about $10 million for the 1990-91 season—in savings accounts for the workers. The workers, however, have not received the full amount of their savings deductions; further, they have not received the interest due them on their savings accounts in their home countries.

[13]Labor bases this position on its view that the deductions were "long-established, perhaps with the knowledge and encouragement of the U.S. government, and did not appear to provide any benefits to the employers."

[14]In January 1992, at the insistence of the U.S. Sugar Corporation, the Regional Labour Board agreed to provide the workers a written notice clarifying that the savings plan is voluntary.

Deductions Fund WICLO

The workers do not actually receive the full 23-percent savings; most receive 20.5 percent because of a deduction for WICLO operations, and some may receive less.[15] Until 1969, WICLO's operations had been funded, in part, through a mandatory wage deduction required by the workers' employment contracts with the growers. In 1969, Labor reaffirmed the position it took in 1968 that it was illegal to include a provision in the workers' employment contracts requiring a wage deduction to support WICLO.

Although the contract provision was removed, WICLO is still being funded by the workers. Under an agreement between the Regional Labour Board and the workers, the Board is authorized to take 2.5 percent of the workers' gross wages out of their savings to pay for WICLO's operations. Labor maintains that it has no jurisdiction to question a payment that is not a deduction from wages by the employer, but a payment pursuant to an agreement between the workers and their home governments. Because the 2.5-percent deduction occurs outside the United States, pursuant to an agreement between the workers and their home governments, Labor contends that the agreement is beyond its power to regulate and cannot be considered in determining whether the deduction is voluntary.

While we agree that Labor cannot regulate the workers' agreements with the home governments, it could determine whether the deduction for savings that is taken by employers in this country is legitimately for that purpose. If Labor were to find that the deduction is in part not for savings, but is instead a mechanism to force the workers to fund WICLO, we believe that Labor could act to safeguard the rights of the workers by regulating the conditions of the agreement between the employers and workers. For example, Labor could require that the employers not transmit the deduction to the workers' home governments, as is now the case, but deposit it in a U.S. bank account in the workers' names.

Other Issues Related to Savings Deduction

The 1991-92 harvest season was the first time that the workers received interest on their savings accounts, according to WICLO officials, although in prior years the worker's employment contract—which WICLO signed as an agent of the home government—had required that the savings be placed in

[15]According to farm worker advocates, some sugar cane workers have alleged that they have not had timely access to their savings accounts, and that unexplained deductions have been made from their accounts that exceed the 2.5-percent deduction for WICLO.

an interest-bearing account.[16] Labor has not determined whether it has the authority to recover unpaid interest that was promised in the employment contract.[17]

Although the worker's employment contract no longer provides for the payment of interest on savings, the worker enters a separate agreement with his home government that stipulates the payment of interest. Because the failure to pay interest does not involve the worker's employment contract but an agreement with his home government, Labor maintains that it has no authority to require payment of interest or to recover the unpaid interest.

The workers' savings arrangements might be covered by ERISA. We asked Labor whether wage deductions for the savings arrangements may be considered a deferral of income until the termination of covered employment, thereby creating employee pension plans covered under ERISA. Following our January 1992 inquiry about such a possibility, Labor began an investigation to determine whether the savings arrangements are covered by ERISA. As of June 1992, Labor had not completed its investigation. ERISA coverage would include, at least, the payment of interest on the workers' savings accounts.[18,19]

Conclusions

The Department of Labor has taken minimal actions to enforce certain laws and regulations pertaining to the employment situation of foreign workers employed in the Florida sugar cane industry. As of June 1992, Labor had not decided whether to attempt to recover excess transportation costs that lower island workers may have been charged before the 1988-89 harvest season. Also, Labor stated that, with respect to the savings and health and life insurance deductions, it would only seek to remedy H-2A violations beginning with the 1991-92 harvest season. While

[16]This provision was in the U.S. Sugar Corporation's employment contract through the 1990-91 harvest season, but was in the other growers' employment contracts through the 1989-90 season.

[17]In the contract, WICLO, as an agent of the home government, agreed to make itself subject to law suits filed in federal or state courts in Florida.

[18] If the savings arrangements were determined to be covered pension plans under ERISA, workers would be entitled to extensive protections, including financial reporting to Labor, a summary description of their benefit rights and obligations, and the requirement that fiduciaries (those with discretion or control over the savings amounts) act exclusively on behalf of the interests of the workers.

[19] Labor's position on H-2A violations related to savings deductions is the same as its position for health and life insurance deductions, that is, it would not seek to remedy violations prior to the 1991-92 harvest season.

recognizing that there are some practical difficulties, we believe that Labor should attempt to deal with prior inequities against the workers.

Recommendations

Recognizing that there are practical limitations on the extent to which Labor can retroactively calculate and recover income that Caribbean workers have been improperly denied, we recommend that Labor reassess the extent to which workers may have lost income or other benefits due to violations of H-2A and ERISA requirements with regard to transportation costs, the health and life insurance plan, and the savings plan, and, to the fullest extent possible, recover workers' lost income.

Agency Comments and Our Evaluation

The major issue Labor raised, and our response to it, as reflected in our report, is summarized below. Labor also had technical comments on our draft report. We have clarified the report, as appropriate. In addition, we discussed our findings with representatives of the U.S. Sugar Corporation; Florida Fruit and Vegetable Association; Farm Worker Justice Fund, Inc.; and Florida Rural Legal Services, Inc., and incorporated their comments, as appropriate.

Labor maintains ". . . that the protections of U.S. labor law do not extend to regulating the relationships between foreign governments and their citizens and nationals." (See app. II.) While we agree that Labor cannot regulate the workers' agreements with their home governments, it can regulate the agreements between the workers and the growers. We believe that Labor, in the context of the savings plan, could act to ensure workers' receipt of savings by, for example, requiring deposit of such funds in U.S. banks in the workers' names.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days after its issue date. At that time, we will send copies of the report to the appropriate congressional committees, interested Members of Congress, the Secretary of Labor, and other interested parties and make it available to others on request.

If you have any questions, please contact me at (202) 512-7014. Other major contributors are listed in appendix III.

Linda G. Morra
Director, Education and
Employment Issues

Contents

Abbreviations

BWI	British West Indies
ERISA	Employee Retirement Income Security Act of 1974
ETA	Employment and Training Administration
WICLO	West Indies Central Labour Organization

The U.S. Temporary Foreign Farm Worker Program

The Congress has historically given special consideration to the farm sector in immigration policy by establishing programs that allow growers to supplement domestic labor with foreign temporary labor.

In 1917, the Congress passed the Immigration Act, which allowed entry of temporary foreign workers from the Western Hemisphere into the United States. This amounted to the first temporary foreign worker program for nonimmigrant agricultural workers.[1] The temporary worker provision was implemented in response to growers' claims of labor shortages in agriculture during World War I.

In 1942, the Congress established the Mexican Labor program. Under a series of legislative authorizations, temporary Mexican workers, called "braceros," were employed on U.S. farms primarily in Arkansas, Arizona, California, New Mexico, and Texas. At the peak of the program, in the late 1950s, over 400,000 Mexican workers were admitted annually for temporary farm employment. The program was terminated in 1964.

In 1943, complaints from east coast growers of labor shortages led to the creation of the British West Indies (BWI) program.[2] The governments of the Bahamas, Barbados, Dominica, Jamaica, St. Lucia, and St. Vincent entered into an agreement with the U.S. government from 1943 to 1947. The U.S. government was a direct participant in the program, providing funds for the recruitment, transportation, and placement of agricultural workers. By 1945, approximately 24,000 BWI workers were employed in agriculture along the east coast.

Between 1947 and 1952, the BWI program continued as a temporary-worker program, under the provisions of the Immigration Act of 1917. Three-party contracts were drawn up between U.S. employers, the foreign workers, and the governments of the participating nations of the West Indies. (The U.S. government did not directly participate.) In 1951, the participating nations established the Regional Labour Board to oversee BWI program activities. The Board, in turn, established WICLO to act as an agent for the West Indies governments and administer the program in the United States on behalf of these governments. WICLO provides consulting and advisory

[1]A nonimmigrant is an alien having residence in a foreign country that he has no intention of abandoning, who is coming temporarily to the United States to perform agricultural or nonagricultural labor or services.

[2]Before 1943, Florida sugar cane was harvested primarily by U.S. workers. However, the Federal Bureau of Investigation received numerous complaints regarding the mistreatment of workers and actions by sugar company officials to prevent workers from leaving the job. Use of Caribbean workers to cut sugar cane began in 1943. (Big Sugar, Alec Wilkinson, New York, NY, 1989, pp. 137-142)

services to employers and coordinates all aspects of the program with U.S. federal and state authorities. WICLO's headquarters are located in Washington, D.C.; its suboffices are located in South Bay, Florida; Clewiston, Florida; and Southwick, Massachusetts.

The Immigration and Nationality Act of 1952 significantly revised immigration policy. This statute established the H-2 program for the use of temporary foreign workers in U.S. agricultural and nonagricultural industries. In agriculture, the program was used mainly by east coast growers in the sugar cane and apple industries. In 1986 under the Immigration Reform and Control Act, the Congress amended the program to create separate agricultural and nonagricultural temporary foreign worker programs. The new agricultural program is known as H-2A, after the new subsection designation.

Oversight of the H-2A Program by the Department of Labor

The purpose of the H-2A program is to provide U.S. agricultural employers with an adequate labor force while protecting U.S. workers from adverse impacts of the importation of foreign workers. The program allows agricultural employers who anticipate a shortage of domestic workers to apply for permission to bring nonimmigrant aliens into the United States to perform temporary or seasonal labor.

Administration of the H-2A program is the joint responsibility of the Departments of Justice and Labor. The Department of Justice, through the Immigration and Naturalization Service, has approval authority for employers' petitions to bring in foreign workers. Before the Immigration and Naturalization Service can approve such petitions, however, Labor must certify that there are insufficient qualified U.S. workers available to do the work, and the foreign workers' presence will not adversely affect the wages and working conditions of U.S. workers similarly employed.

The Secretary of Labor has given responsibility for the H-2A program to two Labor offices.[3] The Employment and Training Administration (ETA) determines the work conditions necessitating the use of foreign workers. For example, ETA must determine (1) whether the job offer satisfies all statutory and regulatory conditions; (2) whether the employer has made adequate efforts to recruit and hire U.S. workers; and (3) the methodology

[3]Before the enactment of the Immigration Reform and Control Act of 1986, the Employment and Training Administration had sole authority for the H-2A program.

for establishing "adverse effect wage rates."[4] ETA regulations set forth the minimum requirements regarding wages, transportation, meals, and housing for the foreign farm workers.

Since 1987, the Wage and Hour Division of the Employment Standards Administration has had enforcement and investigative responsibilities for contractual obligations and laws and regulations applicable to the employment of H-2A workers. The Division's responsibility for enforcing ETA standards includes carrying out investigations and inspections, imposing penalties, and seeking injunctive relief and specific performance of contractual obligations (including recovery of unpaid wages). The Employment Standards Administration must notify ETA of any violations. ETA can then undertake further enforcement activity regarding future certifications. ETA can deny certification for up to 3 years if a substantial violation is found.

Caribbean Sugar Cane Workers

Six sugar cane producers and producer cooperatives in southern Florida grow about 370,000 acres of sugar cane and use H-2A workers to harvest the cane. With increased mechanization, the growers requested certification for fewer H-2A workers—about 7,000 in the 1991-92 season in contrast to about 10,000 in 1988-89. (See table I.1.)

Table I.1: H-2A Sugar Cane Workers (1989-92)

	H-2A workers		
Growers	**1989-90**	**1990-91**	**1991-92**
Atlantic Sugar Association	1,087	1,006	848
Okeelanta Corporation	2,706	2,599	1,604
Osceola Farms Company	1,199	1,181	900
Shawnee Farms	5	4	4
Sugar Cane Growers Cooperative	944	786	473
U.S. Sugar Corporation	4,126	3,838	3,198
Total	**10,067**	**9,414**	**7,027**

[4]These wage rates are established annually by Labor to prevent the employment of foreign workers from depressing farm wages.

Department of Labor Letter

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

JUN 2 • 1992

The Honorable Linda G. Morra
Director, Education and
Employment Issues
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Morra:

Thank you for the opportunity to review your office's draft report, Foreign Farm Workers in the U.S.: Department of Labor Action Needed to Protect Florida Sugar Cane Workers (GAO/HRD-92-95).

The Secretary has asked me to coordinate the Department's review of the draft report. Staff from the Employment Standards Administration, Employment and Training Administration, Pension and Welfare Benefits Administration, Office of Inspector General, and Solicitor's Office have reviewed the draft, and the enclosure contains all of these agencies' comments.

The Department believes that very significant improvements have been made in protecting Caribbean workers admitted to work in the south Florida sugar cane harvest since the Immigration and Nationality Act's temporary nonimmigrant agricultural worker, or H-2A, program was changed by the Immigration Reform and Control Act in 1986. We will continue our efforts to assure that these workers, and U.S. workers in corresponding employment, are provided the full protection that the law affords. We maintain the view, however, that the protections of U.S. labor law do not extend to regulating the relationships between foreign governments and their citizens and nationals, as your draft report implies.

Should you have any further questions, please contact Ms. Karen R. Keesling, Acting Administrator of the Wage and Hour Division, at 523-8305.

Sincerely,

CARI M. DOMINGUEZ

Enclosure

Major Contributors to This Report

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Atlanta Regional Office	Ira B. Spears, Regional Management Representative Jacqueline Harpp, Evaluator-in-Charge Stacey E. Harlow, Staff Evaluator

Related GAO Products

Immigration and the Labor Market: Nonimmigrant Alien Workers in the United States (GAO/PEMD-92-17, Apr. 28, 1992).

Hired Farmworkers: Health and Well-Being at Risk (GAO/HRD-92-46, Feb. 14, 1992).

The H-2A Program: Protections for U.S. Farmworkers (GAO/PEMD-89-3, Oct. 21, 1988).